

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Charles R. SLATER)	Group Art Unit: 3739
)	
Application No.: 09/484,247)	Examiner: Michael F. Peffley
)	
Filed: January 18, 2000)	
)	
For: BIPOLAR ENDOSCOPIC SURGICAL)	Confirmation No.: 9470
SCISSORS BLADES AND)	
INSTRUMENT INCORPORATING)	
THE SAME)	

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION FOR PATENT TERM ADJUSTMENT
DUE TO EXAMINATION DELAY UNDER 37 C.F.R. § 1.181

Applicant hereby petitions the Commissioner for Patents, under the provisions of 37 C.F.R. § 1.181 and M.P.E.P. § 2720, to adjust the extension of patent term recited on the Determination of Patent Term Extension under 35 U.S.C. § 154(b) to 141 days. This petition is being filed before or with the issue fee payment.

Applicant received the Determination of Patent Term Adjustment with the Notice of Allowance and Fee(s) Due mailed from the Patent and Trademark Office (PTO) on July 13, 2011, advising that this application is entitled to 79 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 141 days based on the following facts:

This application was filed on January 18, 2000, so that the provisions for extension of patent term due to 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701 apply.

On September 21, 2010, an interference involving this application (Interference No. 105,774) was declared by the Board of Patent Appeals and Interferences.

On December 8, 2010, the Board mailed a favorable interference decision (attached as Exhibit A).

On February 8, 2011, the time period to appeal the interference decision to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. § 141, or for commencing a civil action in a federal district court under 35 U.S.C. § 146, expired pursuant to 37 C.F.R. § 1.304(a).

For this application filed in 2000, the patent term adjustment due to interference delay is provided for in 37 C.F.R. § 1.701(c)(1)(i). This rule specifies that the period of examination delay for an application involved in an interference is the number of days beginning on the date the interference was declared, here September 21, 2010, and ending on the date the interference was terminated. The termination date of the interference is defined in 37 C.F.R. § 41.205 as follows:

After a final decision is entered by the Board, an interference is considered terminated when no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had. If . . . a civil action (under 35 U.S.C. 146) has been filed the interference is considered terminated when the appeal or civil action is terminated. A civil action is terminated when the time to appeal the judgment expires.

The time for appealing a final interference decision under either 35 U.S.C. § 141 or § 146 is defined in 37 C.F.R. § 1.304 as two months from the date of the final decision of the Board. Thus, the termination date for the interference is two months beyond the decision date of December 8, 2010, which is February 8, 2011. Applicant notes that the PTO used the interference decision date of December 8, 2010, as the end date for calculating the interference delay - not the termination date of February 8, 2011 - to arrive at an adjustment of 79 days. Instead, the adjustment due to interference delay is 141 days, *i.e.*, the number of days between September 21, 2010, the date the interference was declared, and February 8, 2011, the date when the interference was terminated. Applicant respectfully requests that the current patent term adjustment be reconsidered.

Applicant does not believe that any fee is due with this petition. However, if a fee is due, please charge Deposit Account 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 26, 2011


By: 
Lara C. Kelley
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(202) 408-4000

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NIGEL M. GOBLE and COLIN C.O. GOBLE
Junior Party
(Patent No. 5,860,975)¹

v.

CHARLES R. SLATER
Senior Party
(Application 09/484,247)²

Patent Interference No. 105,774
(Technology Center 3700)

Before: RICHARD E. SCHAFER, JAMESON LEE, and RICHARD TORCZON,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

Judgment – Request for Adverse – Bd. R. 127(b)

¹ Based on Application 08/573,187, filed December 15, 1995. The real party in interest is Gyrus Medical Ltd. (Paper 10).

² Filed January 18, 2000. The real party in interest is Boston Scientific Miami Corporation. (Paper 15). Accorded the benefit of Application 08/806,386, filed February 27, 1997, now Patent 6,447,511, and Application 08/354,992, filed December 13, 1994.

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Goble v. Slater

1 On 3 December 2010 junior party Goble filed a paper requesting entry of
2 adverse judgment. (Paper 21).

3 The request is herein *granted*.

4 It is

5 **ORDERED** that judgment on priority as to Count 1 is entered against junior
6 party NIGEL M. GOBLE and COLIN C.O. GOBLE;

7 **FURTHER ORDERED** that junior party's claims 1 and 3-12 of Patent
8 5,860,975, which correspond to Count 1, are CANCELLED;

9 **FURTHER ORDERED** that the parties shall note the requirements of
10 35 U.S.C. §135(c) and Bd.R. 205; and

11 **FURTHER ORDERED** that a copy of this judgment shall be entered into
12 the file of Application 09/484,247, and Patent 5,860,975.

Interference No. 105,774
Goble v. Slater

1 By Electronic Transmission

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